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10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN JOSE DIVISION**

13 IN RE: HIGH-TECH EMPLOYEE  
14 ANTITRUST LITIGATION

15 THIS DOCUMENT RELATES TO:  
16 ALL ACTIONS  
17  
18  
19

Master Docket No. 11-CV-2509-LHK

**DEFENDANTS' JOINT  
ADMINISTRATIVE MOTION TO SEAL**

Pursuant to N.D. Cal. Civ. L.R. 7-11 and 79-5, Defendants hereby jointly move to seal (i) portions of Defendants Opposition to Plaintiffs' Motion for Class Certification ("Opposition"), (ii) all or portions of Exhibits 1-6, 8-23, 25-27 to the Declaration of Christina Brown filed in support of Defendants' Opposition, (iii) portions of the Expert Report of Kevin Murphy and Exhibits ("Murphy Report"), (iv) Defendants' Motion to Strike the Report of Dr. Edward E. Leamer ("Motion to Strike"); and (v) Exhibits A-H to the Declaration of Susan Welch. Redacted versions have been filed. This information has been designated Confidential or Attorneys-Eyes Only under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107). Defendants are filing corresponding declarations in support of the respective sealing requests.

In addition, Defendants seek to seal certain portions of the Opposition, Exhibits 1-6, 10-14 to the Brown Declaration, the Motion to Strike, and Exhibits A-H to the Welch Declaration, which reflect portions of deposition transcripts of Plaintiffs and their expert Edward Leamer that Plaintiffs designated Confidential or Attorneys-Eyes Only under the Protective Order.

## **I. LEGAL STANDARD**

Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court to permit sealing of court documents for, inter alia, the protection of "a trade secret or other confidential research, development, or commercial information." Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has "carved out an exception to the presumption of access to judicial records for a sealed discovery document [attached] to a nondispositive motion," where the requesting party shows good cause exists to keep the records under seal. *Navarro v. Eskanos & Adler*, No. C-06 02231, 2007 U.S. Dist. LEXIS 24864, at \*6 (N.D. Cal. March 22, 2007) (citing *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) ("[A] 'particularized showing' under the 'good cause' standard of Rule 26(c) will 'suffice[] to warrant preserving the secrecy of sealed discovery material attached to nondispositive motions.'"); see also *Pintos v. Pacific Creditors Assoc.*, 565 F.3d 1106, 1115 (9th Cir. 2009) ("In light of the weaker public interest in nondispositive materials, we apply the 'good cause' standard when parties wish to keep them under seal.")).

## **II. GOOD CAUSE EXISTS TO SEAL DEFENDANTS' CONFIDENTIAL**

1                   **INFORMATION**

2                   The redacted portions of the Opposition and Murphy Report, Exhibits 1, 8, 14-23, and  
 3 25-27 to the Brown Declaration, the Motion to Strike, and the declarations filed in support of  
 4 these documents contain confidential and commercially sensitive information about employee  
 5 compensation, including Defendants' compensation data as well as information that reflects  
 6 certain Defendants' internal decision-making regarding their business strategies related to  
 7 compensation and internal assessments of their and other employers' competitive position in the  
 8 labor market. Defendants also seek to keep under seal those materials that reflect compensation  
 9 practices, strategies and policies; recruiting and hiring data, practices, strategies and policies; and  
 10 personal identifying information of employees or candidates. Defendants designated the  
 11 foregoing information "Confidential" or "Attorneys Eyes Only" under the Protective Order.

12                  As the accompanying declarations demonstrate, Defendants keep the sealed information  
 13 confidential and the public disclosure of this information would cause each Defendant harm by  
 14 giving third-parties (including individuals responsible for competitive decision-making) insights  
 15 into confidential and sensitive aspects of each of the Defendants' strategies, competitive  
 16 positions, and business operations, allowing these third-parties to potentially gain an unfair  
 17 advantage in dealings with and against each of the Defendants. A significant portion of the  
 18 sealed information is employee compensation data cited or quoted in the Murphy Report. This  
 19 type of information is regularly sealed because of its confidential and private nature. *See Renfro*  
 20 *v. Unum, et al.*, No. 09-2661, 2010 BL 104197 (N.D. Cal. May 10, 2010) (granting a motion to  
 21 seal records containing plaintiffs' salary information); *Nettles v. Farmers Ins. Exch.*, No. C06-  
 22 5164, 2007 WL 858060, at \*2, 2007 BL 247444 (W.D. Wash. Mar. 16, 2007) (holding that  
 23 salary review notices for third parties "who have not chosen to have their salary history placed  
 24 into the public record" could be sealed.); *EEOC v. Kokh, LLC*, No. CIV-07-1043, 2010 U.S.  
 25 Dist. LEXIS 82526, at n.1, 2010 BL 187807 (W.D. Okla. Aug. 09, 2012) (noting that portions of  
 26 summary judgment materials were filed under seal because they contained "confidential salary  
 27 information"). Similarly, compensation policies, practices and decisions are routinely subject to  
 28 a sealing order. *In re Wells Fargo Loan Processor Overtime Pay Litigation*, No. C 07-01841, at

1 \*16, 2008 U.S. Dist. LEXIS 53616, 2008 BL 123131 (N.D. Cal. June 09, 2008) (noting that a  
 2 “compensation policy” was filed under seal); *Hertz Equip. Rental Co. v. Useda*, No. CV-10-  
 3 4953, 2010 BL 259718, at \*2 (N.D. Cal. Nov. 02, 2010) (granting a temporary restraining order  
 4 to enjoin a former employee from using a company’s “confidential and/or trade secret employee  
 5 compensation information”).

6 In addition, good causes exists to seal confidential information relating to a company’s  
 7 internal business, recruiting or hiring practices, strategies and policies, including confidential  
 8 analyses of a company’s market position. *See* Fed. R. Civ. Proc. 26(c)(1)(G) (permitting sealing  
 9 of “a trade secret or other confidential research, development, or commercial information”);  
 10 *Krieger v. Atheros Commc’ns, Inc.*, Case No. 11-CV-00640, 2011 U.S. Dist. LEXIS 68033 at  
 11 \*3-4 (N.D. Cal. June 25, 2011) (holding that a company could seal a presentation from its  
 12 investment adviser that contained “sensitive and confidential information, including long-term  
 13 financial projections, discussions of business strategy, and competitive analyses”); *Network*  
 14 *Appliance, Inc. v. Sun Microsystems Inc.*, Case No. C-07-06053, 2010 U.S. Dist. LEXIS 21721,  
 15 at \*9 (N.D. Cal. Mar. 10, 2010) (sealing “internal information regarding [defendant’s] business  
 16 strategies and opportunities that were not widely distributed”); *see also TriQuint Semiconductor,*  
 17 *Inc. v. Avago Techns. Ltd.*, Case No. CV 09-531, 2011 U.S. Dist. LEXIS 143942, at \*9 (D. Ariz.  
 18 Dec. 13, 2011) (granting motion to seal “market analysis information,” under “compelling”  
 19 reason standard applicable to dispositive motions, including a “spreadsheet tracking information  
 20 regarding potentially competitive products,” and other business strategy documents, such as  
 21 information relating to “product competitiveness, and market and technological opportunities  
 22 and risks”).

23 Additionally, good cause exists to seal information pertaining to Defendants’ recruiting  
 24 policies and practices that are proprietary business methods and/or trade secrets. This  
 25 confidential and commercially sensitive business information is non-public and should remain  
 26 confidential under Rule 26(c)(1)(G) (permitting sealing of “a trade secret or other confidential  
 27 research, development, or commercial information”); *see also* Cal. Civ. Code § 3426.1(d)  
 28 (defining trade secrets as information that “(1) Derives independent economic value, actual or

1 potential, from not being generally known to the public or to other persons who can obtain  
 2 economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable  
 3 under the circumstances to maintain its secrecy.”).

4 Good cause also exists for sealing the identities and personal contact information of  
 5 specific employees or applicants that are contained in the Motion or accompanying materials.  
 6 These employees or applicants have not sought to make their identities known or placed in the  
 7 public record. *Nettles* at \*2 (holding that the interests of private parties outweighed the public’s  
 8 right of access with respect to information pertaining to third party salary and employment  
 9 separation information).

### 10 **III. INFORMATION DESIGNATED CONFIDENTIAL BY PLAINTIFFS**

11 Defendants seek to seal certain portions of the Opposition, Exhibits 1-6, 10-14 to the  
 12 Brown Declaration, the Motion to Strike, and Exhibits A-F to the Welch Declaration, which  
 13 reflect portions of deposition transcripts of Plaintiffs and their expert Edward Leamer as set forth  
 14 in the Declaration of Catherine T. Zeng, because they have been designated “CONFIDENTIAL”  
 15 or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the Protective Order. Defendants  
 16 take no position on whether the designated documents satisfy the requirements for sealing, and  
 17 specifically reserve the right to challenge any “CONFIDENTIAL” or “CONFIDENTIAL –  
 18 ATTORNEYS’ EYES ONLY” designation by Plaintiffs under the Stipulated Protective Order as  
 19 and Civil Local Rule 79-5.

### 20 **IV. CONCLUSION**

21 For the foregoing reasons, Defendants respectfully request that this Court order  
 22 Defendants’ Opposition and accompanying materials to be placed under seal. In accordance  
 23 with Civil Local Rule 79-5(d), a proposed order granting Defendants’ Joint Administrative  
 24 Motion to Seal has been lodged with the Clerk in hard copy and served on counsel for Plaintiffs.  
 25 In accordance with Civil Local Rule 79-5(d), Defendants’ proposed redacted version of  
 26 Defendants’ Opposition and Murphy Report is being lodged with the Clerk in hard copy within a  
 27 sealed envelope.  
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8 **ATTESTATION:** Pursuant to General Order 45, Part X-B, the filer attests that concurrence in  
9 the filing of this document has been obtained from all signatories.  
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